

**MEMORANDUM**

TO: County Council

FROM: *MB* Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Expedited Bill 14-07, Forest Conservation - Enforcement

Expedited Bill 14-07, Forest Conservation - Enforcement, sponsored by Councilmember Elrich and Council President Praisner, is scheduled to be introduced on June 26, 2007. A public hearing is tentatively scheduled for July 10 at 1:30 p.m.

Expedited Bill 14-07 would prohibit the Director of Permitting Services from issuing a building permit if land was cleared in violation of the forest conservation law. The bill would also require applicants to notify adjoining property owners before certain tree cutting, clearing, or grading is performed, and specify the time period for that notice to property owners and the Planning Director. In addition, the bill would allow an aggrieved party to file a private civil action to enforce the forest conservation law.

This packet contains:

Bill 14-07  
Legislative Request Report

Circle #

1  
5

Expedited Bill No. 14-07  
Concerning: Forest Conservation –  
Enforcement  
Revised: 6-25-07 Draft No. 3  
Introduced: June 26, 2007  
Expires: December 26, 2008  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Councilmember Elrich and Council President Praisner

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**AN EXPEDITED ACT** to:

- (1) prohibit the Director of Permitting Services from issuing a building permit if land was cleared in violation of the forest conservation law;
- (2) require certain applicants to notify certain other property owners of certain proposed actions under the forest conservation law, and specify the time period for notice to property owners and the Planning Director;
- (3) allow an aggrieved party to file a private civil action to enforce the forest conservation law; and
- (4) generally amend the enforcement provisions of the forest conservation law.

By amending

Montgomery County Code  
Chapter 8, Buildings  
Section 8-25

Chapter 22A, Forest Conservation – Trees  
Sections 22A-4 and 22A-16

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

**Sec. 1. Section 8-25 is amended as follows:**

**8-25. Permits.**

- (a) *Action on application.* The Director must examine or cause to be examined each application for a building permit or an amendment to a permit within a reasonable time after the application is filed. If the application or the plans do not conform to all requirements of this Chapter, the Director must reject the application in writing and specify the reasons for rejecting it. If the proposed work conforms to all requirements of this Chapter and all other applicable laws and regulations, including Chapter 22A, the Director must issue a permit for the work as soon as practicable.

\* \* \*

- (c) [Reserved.] Compliance with forest conservation law. The Director must not issue a permit for any structure that would be located on, in, or under land from which any tree or other woody plant has been cut, cleared, or graded in violation of Chapter 22A.

\* \* \*

**Sec. 2. Section 22A-4 is amended as follows:**

**22A-4. Applicability.**

\* \* \*

Any person who expects to cut, clear, or grade more than 5000 square feet of forest or any champion tree, and who believes that the cutting, clearing, or grading is exempt under Section 22A-5, 22A-6, 22A-7, or 22A-8, must notify the Planning Director and the owner of any adjoining or confronting property in writing at least 10 days before performing any cutting, clearing, or grading, and seek confirmation from the Director that the cutting, clearing, or grading is in fact exempt from Article II. Failing to notify the Director and any property owner entitled to notice as required by

this Section, or performing any cutting, clearing, or grading before the Director confirms that an exemption applies, is a violation of this Chapter.

\* \* \*

**Sec. 3. Section 22A-16 is amended as follows:**

**22A-16. Penalties and other remedies.**

- (a) *Class A violation.* Violation of this Chapter or any regulations adopted under it is a Class A civil or criminal violation. Notwithstanding Section 1-19, the maximum civil fine is \$1,000. Each day a violation continues is a separate violation under this Chapter.
- (b) *Enforcement authority.* The Maryland-National Capital Park and Planning Commission has primary enforcement authority under this Chapter. [Administrative] The Planning Director may initiate administrative enforcement actions [are to be initiated by the Planning Director in accordance with] under this Article.
- (c) *Civil and criminal actions.* The Commission may bring any civil or criminal action that the County may bring under Sections 1-18, 1-19, and 1-20 to enforce this Chapter or any regulation adopted under it. The Commission may also bring a civil action to enforce a forest conservation plan and any associated agreements and restrictions or to enforce an administrative order. These remedies are in addition to:
  - (1) any remedy that the Commission or County may initiate under state or County law to enforce the terms of a regulatory approval which incorporates a forest conservation plan; and
  - (2) any private civil remedy available under subsection (d).
- (d) *Private civil action.* An aggrieved person may file a civil action in any court with jurisdiction to enforce this Chapter or any forest conservation plan, administrative order, or other regulatory approval under it. An

aggrieved person includes the owner of any adjoining or confronting property. In an action filed under this subsection, the court may temporarily or permanently enjoin any violation or imminent violation of County law, order any person to correct any violation of County law, award damages to any person entitled to them by law, remand the matter to the Board for any necessary action under this Chapter, or order any other appropriate remedy. In an action filed under this subsection, an aggrieved person may challenge the factual basis of any order or decision by the Director if the person shows that the order or decision was:

(1) based on materially false, misleading, inaccurate, or incomplete information; or

(2) taken without proper notice to any person who was entitled to notice under this Chapter.

[(d)] (e) \* \* \*

[(e)] (f) \* \* \*

**Sec. 2. Expedited Effective Date.** The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

*Approved:*

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Marilyn J. Praisner, President, County Council

Date

*Approved:*

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Isiah Leggett, County Executive

Date

## LEGISLATIVE REQUEST REPORT

Expedited Bill 14-07, *Forest Conservation - Enforcement*

**DESCRIPTION:** Prohibits the Director of Permitting Services from issuing a building permit if land was cleared in violation of the forest conservation law. Requires notice to adjoining property owners before certain tree cutting, clearing, or grading is performed. Allows aggrieved parties, including nearby property owners, to file private civil actions to enforce the forest conservation law.

**PROBLEM:** Need for more proactive enforcement of the forest conservation law.

**GOALS AND OBJECTIVES:** To provide earlier notice of potential violations of the forest conservation law, preclude a violator from building on illegally cleared land, and allow an aggrieved party to file a private civil action to enforce the law.

**COORDINATION:** Department of Permitting Services; Planning Department

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** To be requested.

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** To be researched.

**SOURCE OF INFORMATION:** Michael Faden, Senior Legislative Attorney, 240-777-7905

**APPLICATION WITHIN MUNICIPALITIES:** To be determined.

**PENALTIES:** See County Code §22A-16.